

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

JESSICA JONES, et al.,

Plaintiffs,

v.

VARSITY BRANDS, LLC, et al.

Defendants.

Case No. 2:20-cv-02892-SHL-tmp

JURY DEMAND

**PLAINTIFFS' SUPPLEMENTAL MOTION TO UNSEAL FILINGS PREVIOUSLY
FILED UNDER SEAL**

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INTRODUCTION

On November 21, 2023, Plaintiffs filed a motion to unseal briefs and documents previously filed under seal. *See* ECF No. 529. After filing the motion, Defendants agreed to review the materials that they had previously designated as confidential and agreed to unseal as much of the material as possible, and that the parties would then bring to the Court any remaining sealing issues. *See* ECF No. 542. Defendants have finished that task and the parties have met and reached agreement to unseal in whole or in part a number of documents previously filed under seal in their entirety. Plaintiffs propose that these materials be filed in the public docket at this juncture, with the parties reserving their rights with respect to the redacted portions.

Thus, Plaintiffs ask the Court to permit the parties to refile the briefs, unsealing all materials that the parties agreed may be unsealed. Defendants have confirmed that they either do not oppose or take no position on this request.

A Proposed Order permitting the filing of previously sealed materials is submitted herewith.

BACKGROUND

On November 21, 2023, Plaintiffs filed a motion to unseal certain filings filed under seal because they contained material designated confidential pursuant to the Protective Order. *See* ECF No. 529. Among other things, Plaintiffs asserted that principles of open access to the courts and the importance of this litigation supported the filing of certain materials on the Court's docket. *Id*; *see also* ECF No. 131 (Order re Sealing Sparingly). On December 12, 2023, the parties filed a joint motion to withdraw that motion, ECF No. 542, so that Defendants could re-review the materials that they had designated as confidential and so that the parties could agree to unseal as much as possible. *See* ECF No. 542 at ¶¶ 5, 6, 8. Defendants have completed their review process, and provided plaintiffs with a list of all of the portions of briefs and exhibits that Defendants intend to seek to maintain under seal, along with an explanation of why it should be kept under seal and the legal authority for sealing. *See* ECF No. 542 at ¶ 8. The Defendants agree

that the majority of the legal briefs previously filed under seal should be unsealed, although they assert that some portions of the briefs should be redacted from public view. Although Plaintiffs disagree with Defendants' proposed redactions and believe that the entirety of the legal briefs should be unsealed, Plaintiffs are not asking the Court to determine whether the redacted materials are properly sealable at this time. Plaintiffs believe it would be prudent to first re-file what the parties agree may be unsealed, and then address the sealing of the redacted materials and underlying exhibits at a later date.

Defendants have agreed that a significant portion of their previously confidential materials may be unsealed in whole or in part. Pursuant to the joint motion, Plaintiffs have met and conferred with the third parties whose material was designated confidential. *See* ECF No. 542 at ¶ 10. The third-party plaintiffs from the related case *Fusion Elite All Stars, et al. v. Varsity Brands, LLC, et al.*; Case No. No. 2:20-cv-02600-SHL-tmp ("Fusion Elite Plaintiffs") have also agreed that a significant portion of their previously confidential materials may be unsealed. *See* Decl. of K. Rayhill ¶¶ 2–4. No other third-party material is contained in the briefs.

REQUESTED RELIEF

A. The Court Should Grant Leave to Refile Filings that Defendants and Third Parties Agree Should be Unsealed.

Pursuant to the joint motion at ECF No. 542, Defendants re-reviewed materials filed under seal because they contained material previously designated as confidential. Having reviewed these filings, Plaintiffs and Defendants now agree that the following filings may be unsealed in their entirety:

- Plaintiffs' Class Certification Brief (ECF No. 389);
- Defendants' Opposition to Motion to Exclude Orszag and Murphy (ECF No. 423);
- Plaintiffs' Opposition to Motion to Exclude Netz (ECF No. 426);
- Plaintiffs' Opposition to Motion to Exclude Heeb (ECF No. 430);
- Defendants' Reply in support of Motion to Exclude Netz (ECF No. 445);

- Plaintiffs' Reply in support of Motion for Class Certification (ECF No. 454);
- Webb's Brief in Support of Motion Summary Judgment (ECF No. 467);
- USASF's Brief in support of Motion for Summary Judgment (ECF No. 469);
- Bain's Brief in support of Motion for Summary Judgment (ECF No. 472);
- Charlesbank's Brief in support of Motion for Summary Judgment (ECF No. 473);
- Plaintiffs' Opposition to Webb Motion for Summary Judgment Brief (ECF No. 477);
- Plaintiffs' Opposition to USASF Motion for Summary Judgment Brief (ECF No. 479);
- Webb's Reply in support of Motion for Summary Judgment (ECF No. 503); and
- USASF's Reply in support of Motion for Summary Judgment (ECF No. 504).

Plaintiffs have also communicated with the relevant third parties whose material was referenced in these filings. *See* Decl. of K. Rayhill ¶¶ 2–4. All third parties have confirmed that nothing in these filings should be sealed. *Id.* ¶¶ 2–4. Thus, Plaintiffs ask the Court for leave to refile these filings publicly without any sealing.

B. The Court Should Permit the Parties to Refile Filings in Part with Redactions

After re-reviewing the materials, Defendants have agreed to unseal in part certain other materials containing previously-designated confidential materials. With respect to other portions, Defendants maintain their confidentiality designations. Plaintiffs have also met and conferred with the relevant third parties and have confirmed that the Fusion Elite Plaintiffs have also maintained confidentiality designations with respect to other portions of the filings. *See* Decl. of K. Rayhill ¶¶ 2-4. Plaintiffs do not agree that Defendants and third-party Fusion Elite Plaintiffs' proposed redactions are proper. However, pursuant to the joint motion at ECF No. 542, the parties have substantially reduced the amount of material in the filings covered by confidentiality designations.

Pursuant to that stipulated effort, Plaintiffs ask the Court at this time for leave to refile the following filings, maintaining redactions covering the portions designated confidential by Defendants and third-party Fusion Elite Plaintiffs:

- Defendants' Memorandum of Law in Support of Motion to Exclude Testimony of Plaintiffs' Proffered Expert Janet S. Netz, PHD (ECF No 383);
- Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion to Exclude Jonathan M. Orszag and Dr. Kevin Murphy, In Part (ECF No 384);
- Defendants' Memorandum of Law in Support of Motion to Exclude Testimony of Plaintiffs' Proffered Expert Randal Heeb, PHD (ECF No 390);
- Defendants' Memorandum of Law in Support of Motion to Exclude Testimony of Plaintiffs' Proffered Expert Jen Maki, PHD (ECF No 392);
- Defendants' Memorandum of Law in Response to Plaintiffs' Motion for Class Certification (ECF No 421);
- Plaintiffs' Opposition to Defendants' Motion to Exclude the Testimony of Jen Maki, PHD (ECF No 428);
- Plaintiffs' Reply in Support of Motion to Exclude Orszag and Murphy (ECF No 441);
- Defendants' Statement of Undisputed Material Facts in Support of Defendants' Joint Motion for Summary Judgment (ECF No 468);
- Defendants' Memorandum of Law in Support of Joint Motion for Summary Judgment (ECF No 471);
- Plaintiffs' Statement of Additional Undisputed Facts ISO Plaintiffs' Oppositions to Defendants' Motion for Summary Judgment (ECF No 480);
- Plaintiffs' Response to Statement of Undisputed Material Facts in Support of Defendants' Joint Motion for Summary Judgment (ECF No 482);
- Plaintiffs' Opposition to Defendants Charlesbank Partners, LLC and Bain Capital Private Equity's Motion for Summary Judgment (ECF No 484);

- Plaintiffs' [Corrected] Opposition to Defendants' Joint Motion for Summary Judgment (ECF No 488-1);
- Defendants' Reply Memorandum of Law in Support of Joint Motion for Summary Judgment (ECF No 505);
- Bain's and Charlesbank's Individual Reply Memorandum of Law in Support of Motion for Summary Judgment (ECF No 506);
- Defendants' Reply in Support of Statement of Undisputed Material Fact (ECF No 507); and
- Defendants' Response to Plaintiffs' Additional Statements of Fact (ECF No 508).

Defendants either do not oppose or take no position on this request.

Dated: March 19, 2024

Respectfully submitted,

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CERTIFICATE OF CONSULTATION

I hereby certify, pursuant to Local Rule 7.2(a)(1)(B), that I met and conferred with counsel for Defendants regarding this motion several times, both telephonically and through email correspondence. Defendants have informed me that they do not oppose and/or take no position with respect to the requested relief.

/s/ David Seidel

David H. Seidel